

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ALBERTO WILLIAM VILAR and
GARY ALAN TANAKA,

Defendants.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/17/2012

No. 05 Cr. 621 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

On September 4, 2012, Defendants submitted a motion requesting that the Court reconsider its Order, dated May, 21, 2012, denying Defendants bail pending appeal. That Order denied Defendants bail because they presented flight risks and failed to raise a substantial question of law or fact on appeal that is likely to result in reversal or a new trial. (Doc. No. 527 at 2.) The Defendants now ask the Court to reverse course and grant Defendants bail pending appeal. Remarkably, the basis of their request is a Second Circuit decision denying them that very thing. *United States v. Vilar*, No. 10-521 (2d Cir. Aug. 28, 2012) (order denying bail pending appeal). Defendants argue that by denying their application without prejudice to renewal, rather than issuing a summary denial, the Second Circuit sent a “strong signal” that Defendants’ appeal has substantial merit. (Doc. No. 531-1 at 2.)

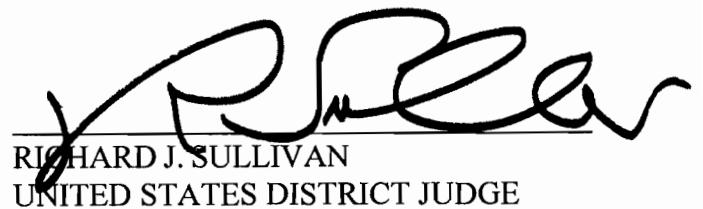
The Court declines to engage in such rank speculation. Other courts have refused such invitations to “judicial tea leaf reading” even when the basis for doing so arguably was stronger. *See, e.g., Citadel Corp. v. Puerto Rico Highway Auth.*, 695 F.2d 31, 33 n.4 (1st Cir. 1982). Nor is the Court persuaded by Walter Pfaeffle’s declaration asserting that Defendant Vilar is not a flight risk (Doc. No. 531-3), which fails to rebut the grounds on which the Court denied

Defendants' first request for bail pending appeal. In short, Defendants have failed to overcome the "presumption in favor of detention" that applies following a guilty verdict and sentencing. *United States v. Abuhambra*, 389 F.3d 309, 319 (2d Cir. 2004). Accordingly, their request for bail pending appeal is HEREBY DENIED.

The Clerk of the Court is respectfully requested to terminate the motion pending at Doc. No. 532.

SO ORDERED.

Dated: September 14, 2012
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE